

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.7286 of 2018

ORDER:

Heard Sri Raja Reddy Koneti for revision petitioner.

The 2nd defendant in O.S.No.345 of 2014 is the revision petitioner. The 1st petitioner filed the suit for the following reliefs:

- i) “for declaration that the registered sale deed No:4824/2012, dated 14-08-2012 is nominal in favour of 1st defendant being obtained as security for repayment of loan given to plaintiff by 1st defendant and thereby the regd., sale deed No:5660/2013, dt.21-11-2013 executed by 1st defendant in favour of 2nd defendant is not valid and consequentially liable for cancellation.
- ii) For permanent injunction restraining the defendants, their men etc., from and in any way interfering with the plaintiff's peaceful possession and enjoyment of suit schedule property.”

The revision petitioner claims to have purchased the property from the 2nd respondent herein through registered sale deed No:5660/2013 dated 21-11-2013. The revision petitioner files I.A.No.544 of 2014 under Order 7 Rule 11 of Code of Civil Procedure (C.P.C.) to reject the plaint in O.S.No.345 of 2014. The sum and substance of objection against the plaint in O.S.No.345 of 2014 is that the cause of action as made out in the plaint is completely unavailable and secondly that, assuming without admitting, the parties are allowed to participate in the trial and the suit is decided particularly by accepting the prayer of 1st

respondent, still the relief for which the suit is filed cannot and could not be stated to have been derived by the plaintiff. The affidavit filed along with the said application refers to the circumstances under which the suit is liable for rejection under Order 7 Rule 11 of C.P.C. The 1st respondent filed counter and opposed the prayer for rejecting the plaint.

The learned trial Judge considered the rival submissions and recorded the following findings:

“Perused the entire contents of the plaint as well as written statement. The case of the plaintiff as per the plaint is that she purchased vacant house site from Kokku Rama Subbamma for a consideration of Rs.20,00,000/- and paid advance by cash and later on 8-6-2012 paid Rs.14,00,000/- through online banking to the credit of vendors bank account at Rajahmundry. Thus the plaintiff paid RS.15,00,000/- towards part payment. The plaintiff obtained bank loan for the purpose of purchasing the suit schedule property, later due to financial problem, the plaintiff approached the 1st defendant in order to borrow money. The 1st defendant put a condition that as per the custom in the private finance market o lend money sale deed shall be executed in favour of the 1st defendant, after discharge of the debt, the same will be transferred in the name of the plaintiff. Accordingly, the sale deed was executed in favour of the 1st defendant nominally. In fact, possession was delivered to the plaintiff on 14-8-2012; since then plaintiff has been in peaceful possession and enjoyment of the schedule property. Thereafter, some misunderstandings arose between the plaintiff and 1st defendant. The 1st defendant clandestinely executed the registered sale deed on 21-11-2013 in favour of the 2nd defendant. Hence, she filed suit for declaration that the

sale deed dated 14-8-2012 is nominal in favour of 1st defendant being obtained as security for repayment of loan given to the plaintiff by the 1st defendant and thereby the registered sale deed dt. 21-11-2013 executed by the 1st defendant in favour of the 2nd defendant is not valid and consequently liable for cancellation and also for permanent injunction.

As per the version of the 1st defendant, the plaintiff and one Kandula Narasimha Rao approached the 1st defendant and represented that they jointly purchased the schedule property orally from one Kokku Rma Subbamma for investment purpose and offered to sell the same to the 1st defendant for Rs.22,00,000/-, he paid the entire consideration, got executed sale deed wherein Narasimha Rao signed as one of the attestors and he is in possession and enjoyment of the same. Thereafter, he executed registered sale deed dt.21-11-2013 in favour of the 2nd defendant and delivered the vacant possession to the 2nd defendant. 2nd defendant constructed RCC building in the suit schedule property and 2nd defendant is in possession and enjoyment of the same.

It is also the contention of the petitioner/2nd defendant that he purchased the suit schedule property from the 1st defendant on 20.11.2013 and possession was delivered to him and thereafter he constructed a residential building.

Thus there are rival contentions among the parties. As the plaintiff is contending that she is the real purchaser and sale deed was executed in favour of the 1st defendant nominally, without giving an opportunity to the plaintiff to prove the same, it cannot be said that it is a Binami transaction. Hence, it is not hit by Binami Transaction Prohibition Act.”

Hence, the Civil Revision Petition.

Mr.Raja Reddy Koneti contends that the trial Court failed to appreciate the objection and purpose under Order 7 Rule 11 of C.P.C, more particularly when the revision petitioner has made out both by pleading in the affidavit filed in I.A.No.544 of 2014 and also by looking at the very stand taken in the plaint that no cause of action is made out for entertaining the suit and that the suit ought not to have been even numbered by the Office. He further contends that the defence the revision petitioner has taken goes to the root of the matter under provisions of the Benami Transactions (Prohibition) Act, 1988. He prays for setting aside the order under revision and also reject plaint.

I have perused the plaint and also the affidavit filed by the revision petitioner in I.A.No.544 of 2014. It is well settled that whether the suit filed by a party discloses the cause of action or not, whether the plaint prayer is available or not; whether the enforcement of a right, resolution of a dispute etc., is considered by the very averments in the plaint but not to other pleadings. For the said purpose, it is axiomatic that the stand taken by the defendant in the written statement is completely besides the point except limited for the purpose of appreciating the nature of objection raised by such party.

In the case on hand, the 1st respondent seeks cancellation of registered sale dated 14.08.2012 and the consequential sale deed executed by the 2nd respondent in favour of revision petitioner. After going through the averments in plaint, this Court is of the

view that the request for rejection of plaint under Order 7 Rule 11 of C.P.C. if, at this stage, is accepted, the same amounts to prejudging one of the issues which can only be done after full fledged trial. This Court is in full agreement with the findings of the trial Court and cannot redo the whole exercise of finding out whether the cause shown by the 1st respondent warrants continuation of the suit or not.

For the above reasons, I am satisfied no ground is made out. Civil Revision Petition fails and accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 26.12.2018
dv

S. V. BHATT, J



